

BR

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION,

**FILED**

United States of America ex rel. )

SAM COOK, )

Petitioner, )

vs. )

TERRY McCANN, WARDEN, Stateville )

Correctional Center, )

Respondent.JAN 28 2008 *aw*No. <sup>07</sup> 38 C 6851MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURTHonorable: MILTON SHADUR

Presiding Judge

MOTION TO VACATE ORDER OF JANUARY 04, 2008

Now comes the Petitioner, SAM COOK, and respectfully moves this Honorable Court to VACATE its ORDER of JANUARY 04, 2008, for the following reasons:

1. The hereto attached court docket sheet shows beyond doubt that there was not, nor has there ever been a 81/2 month delay in his filing;
2. Further, the docket sheet shows that all delays in regards to the times was by the circuit court in its failure to reply;
3. That the docket sheet shows that each time there was a delay and that at no time was there a time gap of 81/2 months as this court has stated;
4. That petitioner submits the docket sheet as exhibit to the proof that the 81/2 month did not exist.

WHEREFORE, petitioner would respectfully pray that this Honorable Court VACATE its order of JANUARY 04, 2008 and REINSTATE PETITIONERS WRIT, or in the alternative, accept this as notice of appeal along with the attached papers.

DATED: 1-16-2008, 2008:

Respectfully Submitted,

*Sam Cook*

SAM COOK B-39841  
200

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 98CR3072101

SAM

COOK

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION with the Clerk of the Circuit Court.

Charging the above named defendant with:

720-5/9-1(A) (1)

F

MURDER/INTENT TO KILL/INJ

720-5/9-1(A) (2)

F

MURDER/STRONG PROB KILL/INJURE

The following disposition(s) was/were rendered before the Honorable Judge(s):

12/01/98 IND/INFO-CLK OFFICE-PRES JUDGE  
98CR3072101 ID# CR100820209

12/18/98 1701

12/18/98 CASE ASSIGNED  
FITZGERALD, THOMAS R.

12/18/98 1718

12/18/98 DEFENDANT IN CUSTODY  
SIMMONS, HENRY R. JR

12/18/98 PRISONER DATA SHEET TO ISSUE  
SIMMONS, HENRY R. JR

12/18/98 APPEARANCE FILED  
SIMMONS, HENRY R. JR

12/18/98 DEFENDANT ARRAIGNED  
SIMMONS, HENRY R. JR

12/18/98 PLEA OF NOT GUILTY  
SIMMONS, HENRY R. JR

12/18/98 CONTINUANCE BY AGREEMENT  
SIMMONS, HENRY R. JR

01/14/99

01/14/99 DEFENDANT IN CUSTODY  
SIMMONS, HENRY R. JR

01/14/99 PRISONER DATA SHEET TO ISSUE  
SIMMONS, HENRY R. JR

01/14/99 CONTINUANCE BY AGREEMENT  
SIMMONS, HENRY R. JR

02/10/99

02/10/99 DEFENDANT IN CUSTODY  
SIMMONS, HENRY R. JR

02/10/99 PRISONER DATA SHEET TO ISSUE  
SIMMONS, HENRY R. JR

02/10/99 CONTINUANCE BY AGREEMENT  
SIMMONS, HENRY R. JR

03/12/99

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION

03/12/99 DEFENDANT IN CUSTODY

SIMMONS, HENRY R. JR

03/12/99 PRISONER DATA SHEET TO ISSUE

SIMMONS, HENRY R. JR

03/12/99 CONTINUANCE BY AGREEMENT

SIMMONS, HENRY R. JR

04/13/99

04/13/99 DEFENDANT IN CUSTODY

SIMMONS, HENRY R. JR

04/13/99 PRISONER DATA SHEET TO ISSUE

SIMMONS, HENRY R. JR

04/13/99 CONTINUANCE BY AGREEMENT

SIMMONS, HENRY R. JR

05/25/99

05/25/99 DEFENDANT IN CUSTODY

SIMMONS, HENRY R. JR

05/25/99 PRISONER DATA SHEET TO ISSUE

SIMMONS, HENRY R. JR

05/25/99 CONTINUANCE BY AGREEMENT

SIMMONS, HENRY R. JR

06/23/99

06/23/99 DEFENDANT IN CUSTODY

SIMMONS, HENRY R. JR

06/23/99 PRISONER DATA SHEET TO ISSUE

SIMMONS, HENRY R. JR

06/23/99 CONTINUANCE BY AGREEMENT

SIMMONS, HENRY R. JR

06/24/99

06/24/99 DEFENDANT IN CUSTODY

SIMMONS, HENRY R. JR

06/24/99 PRISONER DATA SHEET TO ISSUE

SIMMONS, HENRY R. JR

06/24/99 BEHAVIOR CLINIC EXAM ORDERED

SIMMONS, HENRY R. JR

06/24/99

06/24/99 CONTINUANCE BY AGREEMENT

SIMMONS, HENRY R. JR

08/04/99

08/04/99 DEFENDANT IN CUSTODY

SIMMONS, HENRY R. JR

08/04/99 PRISONER DATA SHEET TO ISSUE

SIMMONS, HENRY R. JR

08/04/99 CONTINUANCE BY AGREEMENT

SIMMONS, HENRY R. JR

09/02/99

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION

09/02/99 DEFENDANT IN CUSTODY

SIMMONS, HENRY R. JR

09/02/99 PRISONER DATA SHEET TO ISSUE

SIMMONS, HENRY R. JR

09/02/99 CONTINUANCE BY AGREEMENT

09/28/99

SIMMONS, HENRY R. JR

09/28/99 DEFENDANT IN CUSTODY

SIMMONS, HENRY R. JR

09/28/99 PRISONER DATA SHEET TO ISSUE

SIMMONS, HENRY R. JR

09/28/99 DISCOVERY ANSWER FILED

SIMMONS, HENRY R. JR

09/28/99 CHANGE PRIORITY STATUS

R

SIMMONS, HENRY R. JR

09/28/99 WITNESSES ORDERED TO APPEAR

SIMMONS, HENRY R. JR

09/28/99 CONTINUANCE BY AGREEMENT

11/12/99

SIMMONS, HENRY R. JR

11/12/99 DEFENDANT IN CUSTODY

SIMMONS, HENRY R. JR

11/12/99 PRISONER DATA SHEET TO ISSUE

SIMMONS, HENRY R. JR

11/12/99 WITNESSES ORDERED TO APPEAR

SIMMONS, HENRY R. JR

11/12/99 CONTINUANCE BY AGREEMENT

01/13/00

SIMMONS, HENRY R. JR

01/13/00 DEFENDANT IN CUSTODY

00/00/00

LACY, WILLIAM G.

01/13/00 PRISONER DATA SHEET TO ISSUE

00/00/00

LACY, WILLIAM G.

01/13/00 CONTINUANCE BY AGREEMENT

03/09/00

LACY, WILLIAM G.

03/09/00 DEFENDANT IN CUSTODY

00/00/00

SALONE MARCUS R.

03/09/00 PRISONER DATA SHEET TO ISSUE

00/00/00

SALONE MARCUS R.

03/09/00 CONTINUANCE BY AGREEMENT

04/18/00

SALONE MARCUS R.

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04/18/00 DEFENDANT IN CUSTODY 00/00/00

SIMMONS, HENRY R. JR

04/18/00 PRISONER DATA SHEET TO ISSUE 00/00/00

SIMMONS, HENRY R. JR

04/18/00 CONTINUANCE BY AGREEMENT 05/03/00

SIMMONS, HENRY R. JR

05/03/00 DEFENDANT IN CUSTODY 00/00/00

SIMMONS, HENRY R. JR

05/03/00 PRISONER DATA SHEET TO ISSUE 00/00/00

SIMMONS, HENRY R. JR

05/03/00 CONTINUANCE BY AGREEMENT 06/12/00

SIMMONS, HENRY R. JR

06/12/00 DEFENDANT IN CUSTODY 00/00/00

SIMMONS, HENRY R. JR

06/12/00 PRISONER DATA SHEET TO ISSUE 00/00/00

SIMMONS, HENRY R. JR

06/12/00 WITNESSES ORDERED TO APPEAR 00/00/00

SIMMONS, HENRY R. JR

06/12/00 CONTINUANCE BY AGREEMENT 08/16/00

SIMMONS, HENRY R. JR

08/16/00 DEFENDANT IN CUSTODY 00/00/00

SIMMONS, HENRY R. JR

08/16/00 PRISONER DATA SHEET TO ISSUE 00/00/00

SIMMONS, HENRY R. JR

08/16/00 WITNESSES ORDERED TO APPEAR 00/00/00

SIMMONS, HENRY R. JR

08/16/00 CONTINUANCE BY AGREEMENT 09/20/00

SIMMONS, HENRY R. JR

09/20/00 DEFENDANT IN CUSTODY 00/00/00

SIMMONS, HENRY R. JR

09/20/00 PRISONER DATA SHEET TO ISSUE 00/00/00

SIMMONS, HENRY R. JR

09/20/00 WITNESSES ORDERED TO APPEAR 00/00/00

SIMMONS, HENRY R. JR

09/20/00 CONTINUANCE BY AGREEMENT 10/12/00

SIMMONS, HENRY R. JR

10/12/00 DEFENDANT IN CUSTODY 00/00/00

SIMMONS, HENRY R. JR

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION

10/12/00 PRISONER DATA SHEET TO ISSUE 00/00/00

SIMMONS, HENRY R. JR

10/12/00 WITNESSES ORDERED TO APPEAR 00/00/00

SIMMONS, HENRY R. JR

10/12/00 CONTINUANCE BY AGREEMENT 11/15/00

SIMMONS, HENRY R. JR

11/15/00 DEFENDANT IN CUSTODY 00/00/00

SIMMONS, HENRY R. JR

11/15/00 PRISONER DATA SHEET TO ISSUE 00/00/00

SIMMONS, HENRY R. JR

11/15/00 WITNESSES ORDERED TO APPEAR 00/00/00

SIMMONS, HENRY R. JR

11/15/00 CONTINUANCE BY AGREEMENT 12/11/00

SIMMONS, HENRY R. JR

12/11/00 PRISONER DATA SHEET TO ISSUE 00/00/00

SIMMONS, HENRY R. JR

12/11/00 MOTION TO WITHDRAW AS ATTORNEY S 2

DICKINSON

SIMMONS, HENRY R. JR

12/11/00 PUBLIC DEFENDER APPOINTED 00/00/00

SIMMONS, HENRY R. JR

12/11/00 MOTION DEFT - CONTINUANCE - MD 01/31/01

SIMMONS, HENRY R. JR

01/31/01 DEFENDANT IN CUSTODY 00/00/00

SIMMONS, HENRY R. JR

01/31/01 PRISONER DATA SHEET TO ISSUE 00/00/00

SIMMONS, HENRY R. JR

01/31/01 CONTINUANCE BY AGREEMENT 03/09/01

SIMMONS, HENRY R. JR

03/09/01 DEFENDANT IN CUSTODY 00/00/00

SIMMONS, HENRY R. JR

03/09/01 PRISONER DATA SHEET TO ISSUE 00/00/00

SIMMONS, HENRY R. JR

03/09/01 MOTION DEFT - CONTINUANCE - MD 04/19/01

SIMMONS, HENRY R. JR

04/19/01 DEFENDANT IN CUSTODY 00/00/00

SIMMONS, HENRY R. JR

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION

04/19/01 PRISONER DATA SHEET TO ISSUE 00/00/00

SIMMONS, HENRY R. JR

04/19/01 WITNESSES ORDERED TO APPEAR 00/00/00

WITH JURY

SIMMONS, HENRY R. JR

04/19/01 CONTINUANCE BY AGREEMENT 06/25/01

SIMMONS, HENRY R. JR

06/25/01 DEFENDANT IN CUSTODY 00/00/00

LACY, WILLIAM G.

06/25/01 PRISONER DATA SHEET TO ISSUE 00/00/00

LACY, WILLIAM G.

06/25/01 CONTINUANCE BY AGREEMENT 07/06/01

LACY, WILLIAM G.

07/06/01 DEFENDANT IN CUSTODY 00/00/00

LACY, WILLIAM G.

07/06/01 PRISONER DATA SHEET TO ISSUE 00/00/00

LACY, WILLIAM G.

07/06/01 CONTINUANCE BY AGREEMENT 07/09/01

LACY, WILLIAM G.

07/09/01 DEFENDANT IN CUSTODY 00/00/00

SIMMONS, HENRY R. JR

07/09/01 PRISONER DATA SHEET TO ISSUE 00/00/00

SIMMONS, HENRY R. JR

07/09/01 WITNESSES ORDERED TO APPEAR 00/00/00

SIMMONS, HENRY R. JR

07/09/01 CONTINUANCE BY AGREEMENT 08/06/01

SIMMONS, HENRY R. JR

08/06/01 DEFENDANT IN CUSTODY 00/00/00

SIMMONS, HENRY R. JR

08/06/01 PRISONER DATA SHEET TO ISSUE 00/00/00

SIMMONS, HENRY R. JR

08/06/01 BEHAVIOR CLINIC EXAM ORDERED 08/06/01

SIMMONS, HENRY R. JR

08/06/01 ENTERED AND CONTINUED 00/00/00

SIMMONS, HENRY R. JR

08/06/01 CONTINUANCE BY AGREEMENT 08/08/01

SIMMONS, HENRY R. JR

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION		
01/30/02 PRISONER DATA SHEET TO ISSUE		00/00/00
SIMMONS, HENRY R. JR		
01/30/02 WITNESSES ORDERED TO APPEAR		00/00/00
SIMMONS, HENRY R. JR		
01/30/02 TRIAL COMENCED AND CONTINUED		01/31/02
SIMMONS, HENRY R. JR		
01/31/02 DEFENDANT IN CUSTODY		00/00/00
SIMMONS, HENRY R. JR		
01/31/02 PRISONER DATA SHEET TO ISSUE		00/00/00
SIMMONS, HENRY R. JR		
01/31/02 VERDICT OF GUILTY	C001	00/00/00
SIMMONS, HENRY R. JR		
01/31/02 BAIL REVOKED		00/00/00
SIMMONS, HENRY R. JR		
01/31/02 PRE-SENT INVEST. ORD, CONTD TO		00/00/00
SIMMONS, HENRY R. JR		
01/31/02 CONTINUANCE BY ORDER OF COURT		02/25/02
SIMMONS, HENRY R. JR		
02/25/02 DEFENDANT IN CUSTODY		00/00/00
SIMMONS, HENRY R. JR		
02/25/02 PRISONER DATA SHEET TO ISSUE		00/00/00
SIMMONS, HENRY R. JR		
02/25/02 MOTION DEFT - CONTINUANCE - MD		03/20/02
SIMMONS, HENRY R. JR		
03/20/02 DEFENDANT IN CUSTODY		00/00/00
SIMMONS, HENRY R. JR		
03/20/02 PRISONER DATA SHEET TO ISSUE		00/00/00
SIMMONS, HENRY R. JR		
03/20/02 CONTINUANCE BY AGREEMENT		03/28/02
SIMMONS, HENRY R. JR		
03/28/02 DEFENDANT IN CUSTODY		00/00/00
SIMMONS, HENRY R. JR		
03/28/02 MOTION DEFENDANT - NEW TRIAL		00/00/00 D
SIMMONS, HENRY R. JR		
03/28/02 DEF SENTENCED ILLINOIS DOC	C001	
42 YRS		
SIMMONS, HENRY R. JR		

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION	
03/28/02 LESSER INCLUDED OFFENSE MERGED	C002
INTO CT. 1	
SIMMONS, HENRY R. JR	
03/28/02 CREDIT DEFENDANT FOR TIME SERV	
CREDIT FROM 10/28/1198	
SIMMONS, HENRY R. JR	
03/28/02 SPECIAL ORDER	
ORAL MTN. TO RECONSIDER DENIED	
SIMMONS, HENRY R. JR	
03/28/02 PUBLIC DEF APPTD FOR APPEAL	
SIMMONS, HENRY R. JR	
03/28/02 CHANGE PRIORITY STATUS	M 00/00/00
SIMMONS, HENRY R. JR	
03/28/02 LET MITTİMUS ISSUE/MITT TO ISS	00/00/00
SIMMONS, HENRY R. JR	
04/23/02 NOTICE OF APPEAL FILED, TRANSFR	00/00/00
04/30/02 NOTICE OF NOTICE OF APP MAILED	00/00/00
04/30/02 HEARING DATE ASSIGNED	05/03/02 1713
05/03/02 PUBLIC DEF APPTD FOR APPEAL	00/00/00
BIEBEL, PAUL JR.	
05/03/02 O/C FREE REPT OF PROCD ORD N/C	00/00/00
BIEBEL, PAUL JR.	
05/03/02 MEMO OF ORDS & NOA PICKED-UP	00/00/00
BIEBEL, PAUL JR.	
05/15/02 APPELLATE COURT NUMBER ASGND	00/00/00 02-1313
05/16/02 REPT OF PRCD ORD FR CRT RPT	00/00/00
05/28/02 COMMON LAW RECORD PREPARED	00/00/00
06/05/02 CLR RECD BY APP COUNSEL	00/00/00
PUBLIC DEFENDER	
10/01/02 TRANS PROC REC/FILED CLKS OFF	00/00/00
10/04/02 REPORT OF PROCEEDINGS PREPARED	00/00/00
10/09/02 REPRT/PROCD RECD BY APP ATTRY	00/00/00
PUBLIC DEFENDER	
01/08/03 SUPPL REPORT OF PRCD PREPARED	00/00/00
01/09/03 SUPPL REC RECD BY APPL COUNSEL	00/00/00
PUBLIC DEFENDER	
03/04/04 MANDATE FILED	03/17/04 1701

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION	
03/17/04 REVIEW COURT AFFIRMANCE	00/00/00
BIEBEL, PAUL JR.	
04/28/04 SPECIAL ORDER	00/00/00 F 2
GRAND JURY REPORTS & POLICE REPORTS (ETC).	
04/28/04 HEARING DATE ASSIGNED	05/03/04 1718
05/03/04 DEFENDANT IN CUSTODY	00/00/00
SIMMONS, HENRY R. JR	
05/03/04 SPECIAL ORDER	00/00/00
PROSE REQUEST DENIED	
SIMMONS, HENRY R. JR	
08/11/04 POST-CONVICTION FILED	00/00/00
08/11/04 HEARING DATE ASSIGNED	08/20/04 1701
08/20/04 CASE ASSIGNED	08/20/04 1718
BIEBEL, PAUL JR.	
08/20/04 DEFENDANT IN CUSTODY	00/00/00
SIMMONS, HENRY R. JR	
08/20/04 SPECIAL ORDER	00/00/00
PETITION PATENTLY WITHOUT MERIT AND FRIVOLOUS THEREFORE DISMISSED	
SIMMONS, HENRY R. JR	
08/20/04 POST-CONV PETITION DENIED	00/00/00
SIMMONS, HENRY R. JR	
08/20/04 SPECIAL ORDER	00/00/00
CLERK WILL NOTIFY DEFENDANT IN WRITING OF THE COURT'S RULING.	
SIMMONS, HENRY R. JR	
08/25/04 NOTIFICATION SENT TO DEFENDANT	00/00/00
09/29/04 SPECIAL ORDER	00/00/00 F 2
RECONSIDERATION FOR CAUSE & LEAVE TO FILE AMENDED P.C. PETITION.	
09/29/04 HEARING DATE ASSIGNED	10/04/04 1718
10/04/04 DEFENDANT IN CUSTODY	00/00/00
GAUGHAN, VINCENT	
10/04/04 CONTINUANCE BY ORDER OF COURT	10/05/04
GAUGHAN, VINCENT	
10/05/04 DEFENDANT IN CUSTODY	00/00/00
SIMMONS, HENRY R. JR	
10/05/04 CONTINUANCE BY ORDER OF COURT	10/29/04
SIMMONS, HENRY R. JR	
10/29/04 CONTINUANCE BY AGREEMENT	11/04/04
GAUGHAN, VINCENT	

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION

11/04/04 DEFENDANT IN CUSTODY	00/00/00	
SIMMONS, HENRY R. JR		
11/04/04 PRISONER DATA SHEET TO ISSUE	00/00/00	
SIMMONS, HENRY R. JR		
11/04/04 CONTINUANCE BY AGREEMENT	11/12/04	
SIMMONS, HENRY R. JR.		
11/12/04 DEFENDANT NOT IN COURT	00/00/00	
SIMMONS, HENRY R. JR		
11/12/04 PRISONER DATA SHEET TO ISSUE	00/00/00	
SIMMONS, HENRY R. JR		
11/12/04 CONTINUANCE BY AGREEMENT	11/15/04	
SIMMONS, HENRY R. JR		
11/15/04 DEFENDANT IN CUSTODY	00/00/00	
SIMMONS, HENRY R. JR		
11/15/04 PRISONER DATA SHEET TO ISSUE	00/00/00	
SIMMONS, HENRY R. JR		
11/15/04 SPECIAL ORDER	00/00/00	
PETITION DISMISSED		
SIMMONS, HENRY R. JR		
02/02/05 SPECIAL ORDER	00/00/00 F	2
STATUS HEARING, SUPPLEMENTAL BRIEF.		
02/02/05 HEARING DATE ASSIGNED	02/07/05	1718
02/07/05 CONTINUANCE BY ORDER OF COURT	02/10/05	
SIMMONS, HENRY R. JR		
02/10/05 DEFENDANT IN CUSTODY	00/00/00	
SIMMONS, HENRY R. JR		
02/10/05 PREVIOUS ORDER TO STAND	00/00/00	
ORDER OF 11/15/2004 TO STAND		
SIMMONS, HENRY R. JR		
02/10/05 SPECIAL ORDER	00/00/00	
OFF CALL		
SIMMONS, HENRY R. JR		
09/10/04 NOTICE OF APPEAL FILED, TRNSFR	00/00/00	
06/17/05 NOTICE OF NOTICE OF APP MAILED	00/00/00	
06/17/05 HEARING DATE ASSIGNED	06/24/05	1713
06/24/05 ILL STATE APPELLATE DEF APPTD	00/00/00	
BIEBEL, PAUL JR.		

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The States Attorney of Cook County filed an INDICTMENT/INFORMATION		
06/24/05 O/C FREE REPT OF PROCD ORD N/C	00/00/00	
BIEBEL, PAUL JR.		
06/24/05 MEMO OF ORDS & NOA PICKED-UP	00/00/00	
BIEBEL, PAUL JR.		
07/15/05 APPELLATE COURT NUMBER ASGND	00/00/00	05-2085
08/03/05 SPECIAL ORDER	00/00/00	F 2
MOTION FOR DISCOVERY.		
08/03/05 HEARING DATE ASSIGNED	08/09/05	1718
07/20/05 REPT OF PROCD ORD FR CRT RPT	00/00/00	
08/09/05 SPECIAL ORDER	00/00/00	
PRO SE MOTION DENIED-OFF CALL		
SIMMONS, HENRY R. JR		
08/16/05 COMMON LAW RECORD PREPARED	00/00/00	
08/18/05 CLR RECD BY APP COUNSEL	00/00/00	
STATE APPELLATE DEFENDER		
10/12/05 TRANS PROC REC/FILED CLKS OFF	00/00/00	
10/20/05 REPT/PROCD RECD BY APP ATTRY	00/00/00	
STATE APPELLATE DEFENDER - ONE VOLUME		
10/20/05 REPORT OF PROCEEDINGS PREPARED	00/00/00	
(1) VOL		
12/05/05 SUPPLEMENTAL CLR PREPARED	00/00/00	
CERTAIN DOCUMENTS(1) VOL		
12/08/05 SUPPL REC RECD BY APPL COUNSEL	00/00/00	
STATE APPELLATE DEFENDER - ONE VOLUME		
10/03/06 SPECIAL ORDER	00/00/00	F 2
MOTION DISCOVER, POLICE REPORTS (ETC).		
10/03/06 HEARING DATE ASSIGNED	10/10/06	1718
10/10/06 SPECIAL ORDER	00/00/00	
PRO SE REQUEST DENIED OFF CALL		
SIMMONS, HENRY R. JR		
03/12/07 MANDATE FILED	03/21/07	1701
03/21/07 SPECIAL ORDER	00/00/00	
AFFIRMED		
PORTER DENNIS J		
11/13/07 SPECIAL ORDER	00/00/00	F 2
DISMISS INDICTMENT.		
11/13/07 HEARING DATE ASSIGNED	11/16/07	1718

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Page 014

PEOPLE OF THE STATE OF ILLINOIS

VS

NUMBER 98CR3072101

SAM

COOK

## CERTIFIED STATEMENT OF CONVICTION / DISPOSITION

I, DOROTHY BROWN, Clerk of the Circuit Court of Cook County, Illinois, and keeper of the records and seal thereof do hereby certify that the electronic records of the Circuit Court of Cook County show that:

The States Attorney of Cook County filed an INDICTMENT/INFORMATION	
11/16/07 DEFENDANT IN CUSTODY	00/00/00
OBBISH JAMES M.	
11/16/07 PRISONER DATA SHEET TO ISSUE	00/00/00
OBBISH JAMES M.	
11/16/07 SPECIAL ORDER	00/00/00
PRO SE MOT TO DISMISS IND	
OBBISH JAMES M.	
11/16/07 CONTINUANCE BY ORDER OF COURT	12/14/07
OBBISH JAMES M.	
11/26/07 SPECIAL ORDER	00/00/00 F 2
GRAND JURY TRANSCRIPTS.	
11/26/07 HEARING DATE ASSIGNED	12/14/07 1718
12/14/07 DEFENDANT IN CUSTODY	00/00/00
OBBISH JAMES M.	
12/14/07 DEFENDANT NOT IN COURT	00/00/00
OBBISH JAMES M.	
12/14/07 MOTION TO DISMISS INDICTMENT	00/00/00 D 2
OBBISH JAMES M.	
12/14/07 SPECIAL ORDER	00/00/00
WRITTEN ORDER ENTERED. OFF CALL. CLERK TO NOTIFY.	
OBBISH JAMES M.	

I hereby certify that the foregoing has been entered of record on the above captioned case.  
Date 12/18/07

DOROTHY BROWN  
CLERK OF THE CIRCUIT COURT OF COOK COUNTY

**SEVENTH CIRCUIT COURT OF APPEALS INFORMATION SHEET**

Include the names of all plaintiffs (petitioners) and defendants (respondents) who are parties to the appeal. Use a separate sheet if needed.

NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION DOCKET NUMBER: 07 cv 6851

PLAINTIFF (Petitioner)

v.

DEFENDANT (Respondent)

Cook/appellant	McCainn/appellee
----------------	------------------

(Use separate sheet for additional counsel)

PETITIONER'S COUNSEL		RESPONDENT'S COUNSEL	
Name	Sam Cook	Name	Sheri L. Wong
Firm	pro-se #B39841	Firm	Office of the Atty General
Address	Stateville - STV P.O. Box 112 Joliet, IL. 60434	Address	100 W. Randolph St. Chgo.II. 60603
Phone		Phone	312) 814-3692

Other Information			
District Judge	Shadur	Date Filed in District Court	12/10/07
Court Reporter	J. Andrews X-6899	Date of Judgment	1/4/08
Nature of Suit Code	530	Date of Notice of Appeal	1/28/08

COUNSEL: Appointed ☐ Retained ☐ Pro Se ☒

FEE STATUS: Paid ☐ Due ☒ IFP ☐

IFP Pending ☐ U.S. ☐ Waived ☐

Has Docketing Statement been filed with the District Court Clerk's Office? Yes ☒ No ☐

If State/Federal Habeas Corpus (28 USC 2254/28 USC 2255), was Certificate of Appealability:

Granted ☐ Denied ☒ Pending ☐

If Certificate of Appealability was granted or denied, date of order: 2/1/08

If defendant is in federal custody, please provide U.S. Marshall number (USM#): \_\_\_\_\_

**IMPORTANT: THIS FORM IS TO ACCOMPANY THE SHORT RECORD SENT TO THE CLERK OF THE U.S. COURT OF APPEALS PURSUANT TO CIRCUIT RULE 3(A). Rev 04/01**

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

219 SOUTH DEARBORN STREET  
CHICAGO, ILLINOIS 60604-184

FILED

JAN 28 2008 *aw*

DOCKETING STATEMENT

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

07 C 6851

Type of Action

XXXXXXXXXX Civil

11 Criminal/Prisoner

\_\_\_\_\_ Cross Appeal

District N.D. Judge MILTON SHADUR

District Court Docket Number 07 C 6851

Statute or Other authority establishing jurisdiction in the:

District Court Northern District of Illinois, eastern Division

Court of Appeals 7th. Circuit

A. Timeless of Appeal

1. Date of entry of judgment or order appealed from 01-04-08
2. Date this notice of appeal filed 01-18-08
3. Filing date of any post-judgment motion filed by any party which tolls time under FRAP 4(a) (4) or 4(b) N.A.
4. Date of entry of order deciding above post-judgment motion

5. Filing date of any motion to extend time under FRAP 4(a) (5) or 4(b)

N.A.

B. Finality of Order or Judgment

1. Is the order of judgment appealed from a final decision on the merits?

Yes X No \_\_\_\_\_

2. If no, a). Did the district court order entry of judgment as to less than all claims or all parties pursuant to FRCP 54(b)?

Yes \_\_\_\_\_ No \_\_\_\_\_

- b). Is the order appealed from a collateral or interlocutory order reviewable under any exception to the finality rule?

Yes X No X

If yes, explain \_\_\_\_\_

(Criminal only)

3. Has the defendant been convicted? Yes X No \_\_\_\_\_.

4. Has a sentence been imposed? Yes X No     .

5. Is the defendant incarcerated? Yes X No     .

C. Has this case previously been appealed? Yes X No     .

If yes, give the case name, docket number and disposition of each prior appeal on a separate sheet.

D. Are any related cases or cases raising related issues pending in this court, any district court of this circuit, or the Supreme Court? Yes      No   X  .

If yes, cite the case and the manner in which it is related on a separate sheet.

E. State the nature of the suit, the relief sought, and the outcome below.

F. Issues to be raised on appeal. Attach one additional page if necessary.

G. Is settlement being discussed? Yes      No X.

H. Is disposition on motions, memoranda, or an abbreviated briefing schedule appropriate? Yes      No 1. If yes, explain on a separate sheet.

Is oral argument necessary? Yes      No X

I. Were there any in-court proceedings below? Yes      No X.

Is a transcript necessary for this appeal? Yes 1 No    . If yes, is transcripts already on file with district court? Yes 1 No    .

If transcript is not already on file, attach copy 1 of transcripts order.

J. List each adverse party to the appeal. Attach additional sheets if necessary.

If no attorney, give address and telephone number of the adverse party.

1. Adverse party TERRY McCANN

Attorney Ellen M. Gendron

### Address

Telephone

## 2. Adverse party

Attorney

**Address****Telephone**



K. Appellant(s) Name SAM ZOOK  
If incarcerated, give identification number B-39441

Telephone \_\_\_\_\_

L. Attorney or pro se litigant filing Docket Statement. Will you be handling the appeal? Yes \_\_\_ No X.

Name \_\_\_\_\_

Attorney ( ) Pro Se (X)

Firm \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

If this is a joint statement by multiple appellants, add the names and address of other appellants and counsel joining in this Docketing Statement on an additional sheet, accompanied by a certification that all appellants concur in this filing.

Signature Sam Cook  
Date 1-16-2008

1. Additional pages, if any, containing extended answers to questions on this form.
2. A copy of the order or judgment from which the appeal is taken.
3. Copy 1 of the transcript order, if any.
4. A certificate of service.

Clerk

Sam Cook

United states District Court

B-39841

United States Courthouse

Box 112

Chicago, Il. 60604

Joliet, Il.-60434

January 22, 2008

RE:DOCKETING STATEMENTR

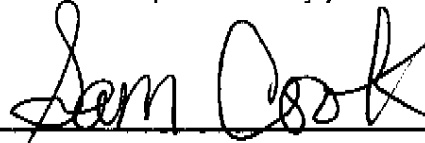
Dear Clerk:

Please find attached a copy of the DOCKETING STATEMENT that I forgot to place with the NOTICE OF APPEAL i sent to your Office on January 178, 2008.

Please file it with those papers.

Thank you very much for your time and consideration in this matter.

Respectfully,



SAM COOK, Petitioner, Pro Se

B- 30841

BOX 112

JOLIET, IL. - 60434

**UNITED STATES DISTRICT COURT  
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 3.0  
Eastern Division**

Sam Cook

Plaintiff,

v.

Case No.: 1:07-cv-06851

Honorable Milton I. Shadur

Terry McCainn

Defendant.

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**NOTIFICATION OF DOCKET ENTRY**

This docket entry was made by the Clerk on Friday, January 4, 2008:

MINUTE entry before Judge Milton I. Shadur :Civil case terminated. Enter Memorandum Order. Accordingly "it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court" (Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts), and this Court therefore dismisses the Petition. That calls for the denial on mootness grounds of Cook's earlier-filed motion seeking the appointment of counsel, and this Court so orders.Mailed notice(srn, )

**ATTENTION:** This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at [www.ilnd.uscourts.gov](http://www.ilnd.uscourts.gov).

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA ex rel.	)	
SAM COOK #B-39841,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 07 C 6851
	)	
TERRY McCANN,	)	
	)	
Respondent.	)	

MEMORANDUM ORDER

As soon as this Court received its chambers copy of the 28 U.S.C. §2254<sup>1</sup> Petition for Writ of Habeas Corpus - Person in State Custody ("Petition") that has been submitted by pro se petitioner Sam Cook ("Cook"), it recognized the lurking potential for the fatal untimeliness of the Petition under Section 2244(d). It therefore parsed the required calculations under that section carefully in a December 11, 2007 memorandum order ("Order"), resulting in the conclusion that the Petition was indeed out of time even under the most favorable pro-Cook assumptions. But pursuant to last year's opinion of the United States Supreme Court in Day v. McDonough, 547 U.S. 198, 209-10 (2006), the Order accorded Cook (and the respondent Warden as well) the opportunity to provide input on the subject before this Court dealt with the timeliness issue in ultimate terms.

Cook has now responded with a filing that he captions

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<sup>1</sup> All further references to Title 28's provisions will simply take the form "Section--."

"Petitioner Reply to Memorandum Order of December 11, 2007," in which he candidly acknowledges the untimeliness of his filing and the fairness of this Court's adherence to the teaching in Day. But all that Cook advances in substantive terms are (1) the claimed existence of issues of constitutional merit and (2) an asserted absence of fault on his part because he "cannot, in all fairness be held at fault for delays by state courts or prisoner lock-downs." Because the first of those assertions is reachable only if the Petition survives in timeliness terms, this follow-up memorandum order focuses on Cook's second contention.

In that respect, nothing in the way that Section 2244(d) is structured creates problems for Cook because of any asserted state court delays. To the contrary, the calculation of the one-year limitation period under that statute is predicated solely on the petitioner's delays, for the limitations clock does not begin to tick until the state courts have completed their consideration and the time for seeking certiorari has run (see Section 2244(d)(1)(A)) and because tolling applies throughout any period during which the petitioner has a state post-conviction proceeding that is still pending (see Section 2244(d)(2)).

That leaves only Cook's assertion in Reply ¶1 that "there was numerous lock-downs at the prison and other issues that made it hard to file some papers, but, all were filed timely." That acknowledgment really torpedoed Cook's contention that he cannot

be faulted for delays ascribable to such lockdowns--as Order at 3 pointed out, Cook had fully 8-1/2 months, once the Illinois Supreme Court had denied leave to appeal from the Illinois Appellate Court's adverse ruling as to state post-conviction relief, within which he could have filed his federal habeas Petition. Yet he let the matter go without a filing during that long period. No reference by Cook to sporadic lockdowns (rather than a continuous lockdown that would have precluded any filing) can save him from the operation of Section 2244(d) (1).

Accordingly "it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court" (Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts), and this Court therefore dismisses the Petition (id.). That calls for the denial on mootness grounds of Cook's earlier-filed motion seeking the appointment of counsel, and this Court so orders.



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Milton I. Shadur  
Senior United States District Judge

Date: January 4, 2008

APPEAL, HABEAS, TERMED, VALDEZ

**United States District Court**  
**Northern District of Illinois - CM/ECF LIVE, Ver 3.0 (Chicago)**  
**CIVIL DOCKET FOR CASE #: 1:07-cv-06851**  
**Internal Use Only**

Cook v. McCainn et al  
Assigned to: Honorable Milton I. Shadur  
Cause: 28:2254 Petition for Writ of Habeas Corpus  
(State)

Date Filed: 12/10/2007  
Date Terminated: 01/04/2008  
Jury Demand: None  
Nature of Suit: 530 Prisoner: Habeas Corpus  
Jurisdiction: Federal Question

**Petitioner**

**Sam Cook**  
*United States of America ex rel.*

represented by **Sam Cook**  
B-39841  
Stateville - STV  
P.O. Box 112  
Joliet, IL 60434  
PRO SE

V.

**Respondent**

**Terry McCainn**

represented by **Sheri L. Wong**  
Office of the Attorney General  
100 West Randolph Street  
Chicago, IL 60601  
(312) 814-3692  
Fax: (312) 814-2253  
Email: swong@atg.state.il.us  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Respondent**

**Lisa Madigan**

**Service List**

represented by **Chief of Criminal Appeals**  
Attorney General's Office

100 West Randolph - 12 Floor  
 Chicago, IL 60601  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
12/04/2007	<a href="#">1</a>	RECEIVED Petition and one copy by Sam Cook; Notice.(Exhibits) (kjc, ) (Entered: 12/06/2007)
12/04/2007	<a href="#">3</a>	APPLICATION by Petitioner Sam Cook for leave to proceed in forma pauperis.(Exhibits) (kjc, ) (Entered: 12/06/2007)
12/04/2007	<a href="#">4</a>	MOTION by Petitioner Sam Cook for appointment of counsel. (kjc, ) (Entered: 12/06/2007)
12/04/2007	<a href="#">5</a>	LETTER from Sam Cook dated 11/28/07. (kjc, ) (Entered: 12/06/2007)
12/04/2007	<a href="#">8</a>	POST MARKED envelope for initiating document by Sam Cook (Document not scanned) (aew, ) (Entered: 12/12/2007)
12/05/2007	<a href="#">2</a>	CIVIL Cover Sheet. (kjc, ) (Entered: 12/06/2007)
12/06/2007		MAILED Copy of Petition to Chief of Criminal Appeals via certified mail, article number 7006 0100 0001 7313 6669. (kjc, ) (Entered: 12/06/2007)
12/10/2007	<a href="#">9</a>	(Court only) RECEIPT regarding payment of filing fee paid; on 12/10/2007 in the amount of \$5.00, receipt number 10342531 (mb, ) (Entered: 12/13/2007)
12/11/2007	<a href="#">7</a>	MEMORANDUM Order Signed by Judge Milton I. Shadur on 12/11/2007:Mailed notice(srn, ) (Entered: 12/12/2007)
12/12/2007	<a href="#">6</a>	MINUTE entry before Judge Milton I. Shadur :Enter Memorandum Order. Both Cook and the Attorney General's office are ordered to respond solely on the statute of limitations issue - - not on the merits of Cook's contentions by a filing to be received in this District Court on or before January 11, 2008. Motion for leave to proceed in forma pauperis <a href="#">3</a> denied. Cook should promptly remit a check or money order for \$5 payable to the Clerk of Court, United States District Court. Motion to appoint counsel <a href="#">4</a> is denied, subject to possible further review based either (1) on the basis for Cook's response of (2) for purposes of addressing the merits if the Petition survives as timely brought.Mailed notice (srn, ) (Entered: 12/12/2007)
12/12/2007	<a href="#">10</a>	PETITION for writ of habeas corpus filed by Sam Cook against Terry McCainn, Lisa Madigan Filing fee \$ 5.(mb, ) (Entered: 12/13/2007)
12/14/2007	<a href="#">11</a>	RETURN of U.S. Post Office receipt, Article number 7006 0100 0001 7313 6669. (gmr, ) (Entered: 12/18/2007)
12/21/2007	<a href="#">12</a>	ATTORNEY Appearance for Respondent Terry McCainn by Sheri L.



		Wong (Wong, Sheri) (Entered: 12/21/2007)
01/02/2008	<a href="#"><u>15</u></a>	REPLY to Memorandum Order of December 11, 2007 by Petitioner Sam Cook; Notice (mb, ) (Entered: 01/07/2008)
01/04/2008	<a href="#"><u>13</u></a>	MINUTE entry before Judge Milton I. Shadur :Civil case terminated. Enter Memorandum Order. Accordingly "it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court" (Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts), and this Court therefore dismisses the Petition. That calls for the denial on mootness grounds of Cook's earlier-filed motion seeking the appointment of counsel, and this Court so orders.Mailed notice (srn, ) (Entered: 01/04/2008)
01/04/2008	<a href="#"><u>14</u></a>	MEMORANDUM Order Signed by Judge Milton I. Shadur on 1/4/2008:Mailed notice(srn, ) (Entered: 01/04/2008)
01/28/2008	<a href="#"><u>16</u></a>	MOTION by Petitioner Sam Cook to vacate order of 01/04/08 (Exhibits). (ar, ) (Entered: 02/01/2008)
01/28/2008	<a href="#"><u>17</u></a>	REQUEST by Petitioner Sam Cook for certificate of appealability. (ar, ) (Entered: 02/01/2008)
01/28/2008	<a href="#"><u>18</u></a>	AFFIDAVIT of Plaintiff, Sam Cook, accompanying motion for permission to appeal in forma pauperis on USCA 7th Circuit form (Exhibit). (ar, ) (Entered: 02/01/2008)
01/28/2008	<a href="#"><u>19</u></a>	DOCKETING Statement by Plaintiff Sam Cook. (ar, ) (Entered: 02/01/2008)
01/28/2008	<a href="#"><u>20</u></a>	NOTICE by Plaintiff Sam Cook as to his motion to vacate order of 01/04/08 <a href="#"><u>16</u></a> , motion for permission to appeal in forma pauperis <a href="#"><u>18</u></a> , docketing statement <a href="#"><u>19</u></a> , and motion for certificate of appealability <a href="#"><u>17</u></a> . (ar, ) (Entered: 02/01/2008)
01/28/2008	<a href="#"><u>23</u></a>	NOTICE of appeal by Sam Cook regarding orders <a href="#"><u>13</u></a> , <a href="#"><u>14</u></a> (Fee Due) (dj, ) (Entered: 02/01/2008)
02/01/2008	<a href="#"><u>21</u></a>	MINUTE entry before Judge Milton I. Shadur : Enter Memorandum Order, this Court denies both Cook's motion to vacate its 01/04/08 memorandum order <a href="#"><u>16</u></a> and his request for a certificate of appealability <a href="#"><u>17</u></a> , but, as required by Section 1915, it orders Cook to pay the full \$455.00 in appellate filing fees in future installments. Cook is advised that he may present his request for a certificate of appealability to the Court of Appeals. (For further detail see separate order). Mailed notice (ar, ) (Entered: 02/01/2008)
02/01/2008	<a href="#"><u>22</u></a>	MEMORANDUM Order, signed by Judge Milton I. Shadur on 2/1/2008 <a href="#"><u>21</u></a> . Mailed notice (ar, ) (Entered: 02/01/2008)